Soon Seng Co Sdn Bhd v Toko Palayakat Jamal (M) Sdn Bhd (formerly known as Abdul Jamal Trading Sdn Bhd)

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S2-24-869 OF 1997
KAMALANATHAN RATNAM J
17 NOVEMBER 1998

Land Law *— Sale of land — Caveat — Application for removal — Plaintiff agreed to buy property from administrator of estate — Deposit paid — Defendant entered caveat on ground that it paid part of purchase price of property — Whether plaintiff was person aggrieved — Whether defendant had shown caveatable interest — Whether administrator should obtain fresh approval for sale to defendant*

The registered owner of a piece of property ('the property') died intestate and the administrator of the estate of the deceased entered into a written agreement with the plaintiff for the sale of the property to the plaintiff. The plaintiff paid a deposit of RM115,000 to the administrator. The administrator later obtained the consent of the court for the sale of the property to the plaintiff. A dispute then arose between the plaintiff and the administrator whereby the plaintiff contended that the administrator had obtained the court's consent out of time and refused to pay the balance of the purchase price. The administrator then sued for specific performance of the agreement and the plaintiff counterclaimed for a rescission of the agreement and for a refund of the deposit.

Meanwhile, the defendant had entered a caveat over the property on the basis that it had paid a sum of RM55,000 for the purchase of the property. Later, the plaintiff decided to complete the sale and purchase and paid the balance of the purchase price to the administrator, but the administrator refused to accept the balance since it no longer wished to continue with the sale of the property to the plaintiff. The plaintiff applied to amend its defence and counterclaim to one of specific performance of the agreement which was allowed by the senior assistant registrar ('the SAR'). The defendant appealed against the decision of the SAR but its appeal was dismissed. The administrator then withdrew its claim for specific performance of the agreement and opposed the plaintiff's amended counterclaim for specific performance. In considering the plaintiff's application for removal of the caveat, the issues to be determined were whether: (i) the plaintiff was an aggrieved person under s 327(1) of the National Code 1965 ('the NLC'); (ii) the defendant had shown a caveatable interest in the property; (iii) the agreement between the plaintiff and the administrator for the sale of the property constituted a conditional contract; (iv) the plaintiff had in fact elected for the rescission of the agreement; and (v) the administrator must reapply to court for the sale of the property to the defendant.

Held, allowing the plaintiff's application:

(1) The plaintiff had entered into an agreement to purchase the said property from the administrator of the deceased registered owner. The court had also given its consent for the sale of the said property to the plaintiff. In pursuance thereof, the plaintiff had paid a sum of RM115,000 as deposit to the administrator's solicitors as stakeholders. The plaintiff had successfully sought an approval from the court to amend the defence and counterclaim to only now pray for specific performance and there had been no appeal against this. This meant that the administrator had accepted the decision that the counterclaim for specific performance was not frivolous nor baseless. It was obvious that the defendant's caveat would affect the plaintiff's legal right to the said property. As such, the plaintiff was a person aggrieved under s 327(1) of the NLC (see pp 81I and 82A–B); *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 and *Wu Shu Chen & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487 followed.

(2) In the present case, the defendant's Form 19B merely stated that the defendant had purchased the property from the administrator and had thus far paid only RM55,000. The Form 19B did not spell out the total purchase price and/or balance of the purchase price to be paid for the property or whether there existed any oral or written agreement in respect of the sale at all. The defendant may have something to hide or which he did not wish to be revealed in relation the purchase of the property. Therefore, the defendant had failed the 'meticulous scrutiny' test and had not shown a caveatable interest (see pp 82I and 83B–D).

(3) The plaintiff itself had averred in its affidavit in support of the originating summons that the contract was a conditional contract. Neither party had in any case stated in their respective submissions what the operative conditions are. However, even if it is a question of any conditions operating against the plaintiff, the plaintiff had waived such conditions by paying the balance of the purchase price (see p 83F–G).

(4) The issue of whether the plaintiff had in fact elected for the rescission of the contract could never arise in this case as an election becomes effective only when a party adopts and maintains a stand throughout the entire case up to its conclusion. This was not the case here because although the plaintiff initially filed a defence and counterclaim to the suit by pleading for rescission of the contract and asking for a refund of the deposit, the plaintiff subsequently amended its pleadings to pray for specific performance of the contract which was granted by the senior assistant registrar (see p 83H–I).

(5) The court's consent is needed for the sale of any immovable property of a deceased by the administrator to protect the interest of the beneficiaries. The court gave consent to the sale of the property to the plaintiff because it was aware of the details of the

A sale including the total purchase price. The total purchase price by the defendant had never been disclosed and it was possible that it was only RM55,000. If this was the case, then it would mean that the beneficiaries were being defrauded. Therefore, the administrator ought to have obtained a fresh approval for the sale of the said property to the defendant and the failure to do so must B prima facie render any contract between the defendant and the administrator voidable pursuant to s 60(6) of the Probate and Administration Act 1959. On the same ground, the defendant had also failed to establish its caveatable interest thereof (see p 84B–E).

C

[Bahasa Malaysia summary

Pemilik berdaftar sebidang harta ('hartanah tersebut') telah meninggal dunia tanpa wasiat dan pentadbir harta pusaka si mati telah mengikat perjanjian bertulis dengan plaintif untuk jualan hartanah D tersebut kepada plaintif. Plaintif telah membayar deposit RM115,000 kepada pentadbir. Pentadbir kemudiannya memperolehi persetujuan mahkamah untuk jualan hartanah tersebut kepada plaintif. Pertikaian kemudiannya telah timbul di antara plaintif dan pentadbir di mana plaintif berhujah bahawa pentadbir telah memperolehi persetujuan mahkamah di luar masa dan enggan membayar baki harga belian. E Pentadbir seterusnya mendakwa untuk pelaksanaan spesifik perjanjian tersebut dan plaintif membuat tuntutan balas untuk pembatalan perjanjian tersebut dan untuk pengembalian deposit.

Sementara itu, defendan telah memasukkan kaveat ke atas hartanah tersebut atas dasar ia telah membayar jumlah sebanyak F RM55,000 untuk membeli hartanah tersebut. Selepas itu, plaintif membuat keputusan untuk menyempurnakan jual beli dan membayar baki harga belian kepada pentadbir, tetapi pentadbir enggan menerima bakinya memandangkan ia tidak lagi ingin meneruskan jualan hartanah tersebut kepada plaintif. Plaintif memohon untuk meminda pembelaan dan tuntutan balas kepada pelaksanaan spesifik G perjanjian tersebut yang dibenarkan oleh penolong kanan pendaftar ('PKP'). Defendan merayu terhadap keputusan PKP tetapi rayuannya ditolak. Pentadbir kemudiannya menarik balik tuntutannya untuk pelaksanaan spesifik perjanjian tersebut dan menentang tuntutan balas terpinda plaintif untuk pelaksanaan H spesifik. Dalam mempertimbangkan permohonan plaintif untuk pembatalan kaveat, isu-isu untuk diputuskan adalah sama ada: (i) plaintif adalah pihak yang terkilan di bawah s 327(1) Kanun Tanah Negara 1965 ('KTN'); (ii) defendan telah menunjukkan kepentingan boleh kaveat dalam hartanah tersebut; (iii) perjanjian di antara plaintif dan pentadbir untuk jualan hartanah tersebut merupakan kontrak I bersyarat; (iv) plaintif pada hakikatnya telah memilih untuk membatalkan perjanjian tersebut; dan (v) pentadbir mesti memohon semula kepada mahkamah untuk jualan hartanah tersebut kepada defendan.

Diputuskan, membenarkan permohonan plaintif: A

(1) Plaintif telah mengikat perjanjian untuk membeli hartanah tersebut daripada pentadbir pemilik berdaftar iaitu si mati. Mahkamah juga telah memberikan persetujuannya untuk jualan hartanah tersebut kepada plaintif. Selaras dengan ini, plaintif telah membayar jumlah sebanyak RM115,000 sebagai deposit kepada peguamcara pentadbir sebagai stakeholders. Plaintif telah berjaya mendapatkan kelulusan daripada mahkamah untuk meminda pembelaan dan tuntutan balas kepada permohonan untuk pelaksanaan spesifik dan tidak terdapat rayuan terhadap ini. Ini bermakna bahawa pentadbir telah menerima keputusan bahawa tuntutan balas untuk pelaksanaan spesifik bukanlah remeh atau tanpa dasar. Adalah nyata bahawa kaveat defendan akan menjejaskan hak sah plaintif kepada hartanah tersebut. Oleh yang demikian, plaintif adalah orang terkilan di bawah s 327(1) KTN (lihat ms 81I dan 82A–B); *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 dan *Wu Shu Chen & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487 diikut. B C D

(2) Dalam kes ini, Borang 19B defendan cuma menyatakan bahawa defendan telah membeli hartanah tersebut daripada pentadbir dan setakat ini hanya telah membayar RM55,000. Borang 19B tidak menyatakan jumlah harga belian dan/atau baki harga belian yang harus dibayar untuk hartanah tersebut atau sama ada wujudnya sebarang perjanjian lisan atau bertulis berkaitan dengan jualan itu sama sekali. Defendan mungkin ada sesuatu untuk dilindungi atau tidak ingin mendedahkan sesuatu yang berhubung dengan belian hartanah tersebut. Dengan itu, defendan telah gagal ujian 'meticulous scrutiny' dan tidak menunjukkan kepentingan boleh kaveat (lihat ms 82I dan 83B–D). E F

(3) Plaintif sendiri telah menegaskan dalam afidavitnya yang menyokong saman pemula bahawa kontrak itu adalah kontrak bersyarat. Tiada satu pihak pun telah menyatakan dalam penghujahan masing-masing apakah syarat-syarat yang beroperasi. Namun demikian, sekalipun ia adalah persoalan mengenai mana-mana syarat yang beroperasi terhadap plaintiff plaintif telah mengenepikan syarat sedemikian dengan membayar baki harga belian (lihat ms 83F–G). G

(4) Isu mengenai sama ada plaintif pada hakikatnya telah memilih untuk membatalkan kontrak tersebut tidak mungkin timbul dalam kes ini kerana suatu pilihan menjadi berkesan hanya apabila suatu pihak menerimapakai dan mengekalkan pendirian sepanjang seluruh kes sehingga penyelesaiannya. Ini tidak berlaku di sini kerana walaupun plaintif pada mulanya memfailkan pembelaan dan tuntutan balas kepada guaman dengan menghujahkan pembatalan kontrak dan meminta pengembalian deposit, plaintif kemudiannya meminda plidingnya untuk memohon pelaksanaan spesifik kontrak tersebut yang dibenarkan oleh penolong kanan pendaftar (lihat ms 83H–I). H I

A (5) Persetujuan mahkamah adalah perlu untuk jualan sebarang harta tak alih si mati oleh pentadbir bagi melindungi kepentingan benefisiari. Mahkamah memberikan persetujuan kepada jualan hartanah tersebut kepada plaintif kerana ia sedar tentang butir-butir jualan termasuk jumlah harga belian. Jumlah harga belian oleh defendan tidak pernah didedahkan dan adalah mungkin B bahawa ia hanyalah sebanyak RM55,000. Andainya begitu, maka ia bermakna bahawa benefisiari tertipu. Maka, pentadbir seharusnya memperolehi kelulusan baru untuk jualan hartanah tersebut kepada defendan dan kegagalan untuk berbuat demikian mestilah prima facie menyebabkan apa-apa kontrak di antara defendan dan pentadbir menjadi boleh batal menurut s 60(6) C Akta Probet dan Pentadbiran 1959. Atas alasan yang sama, defendan juga telah gagal membuktikan kepentingan boleh kaveat (lihat ms 84B–E).]

D **Notes**

For cases on caveat in sale of land, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2498–2507.

Cases referred to

E *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 (folld)
Goh Paik Swan v Ng Choo Lum [1996] 3 MLJ 43 (refd)
Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719 (refd)
Murugappa Chettiar Lakshmanan v Lee Teck Mook [1995] 1 MLJ 782 (refd)
F *Registration of Caveat, Re* [1908] Innes 114 (refd)
Wu Shu Chen & Anor v Raja Zainal Abidin bin Raja Hussin [1997] 2 MLJ 487 (folld)

G **Legislation referred to**

National Land Code 1965 ss 323, 327(1), Form 19B
Probate and Administration Act 1959 s 60(4), (6)

Ahmad Mosdeen (*V Balasingam* with him) (*Balasingam & Co*) for the plaintiff.

H *Shahul Hameed Amirudin* (*Albar Zulkifly & Yap*) for the defendant.

Kamalanathan Ratnam J:

The application

I This is the plaintiff's application to remove a private caveat lodged by the defendant on land held under CT No 14860 Lot 75 Seksyen 6 Bandar Kuala Lumpur with a double storey shop house, No 23 of Jalan Melayu, Kuala Lumpur, on it ('the said property').

Facts

The registered owner of the said property is one K Abdul Rahim who died intestate on 25 March 1977. The administrator of the estate of the deceased, one Abdul Rahim @ Packeer Mohamed bin M Esmailsha ('the administrator') entered into a written agreement with the plaintiff on 28 December 1983 ('the agreement') to sell the said property to the plaintiff for RM1,150,000. The plaintiff paid the usual 10% deposit amounting to RM115,000 pursuant to the said agreement, to the administrator's solicitors as stakeholders. As was required by s 60(4) of the Probate and Administration Act 1959, the administrator obtained the consent of the court to sell the said property to the plaintiff.

Soon a dispute arose between the plaintiff and the administrator. The plaintiff contended that the administrator had obtained the court's consent out of time and refused to pay the balance of the purchase price. The administrator sued for specific performance of the said agreement in the Kuala Lumpur High Court by way of Civil Suit No S6–22–162–87 ('the suit'). The plaintiff counterclaimed for a rescission of the said agreement and for a refund of the deposit. The case is still pending.

On 17 September 1994, the defendant entered a caveat over the said property on the basis that it had paid a sum of RM55,000 for the purchase of the said property. The mandatory Form 19B filed by the defendant pursuant to s 323 of the National Land Code 1965 ('the NLC') states the following reasons for entering the caveat:

(a) Kami berhasrat untuk membeli harta tanah di bawah pegangan hak milik CT No 14860 Lot No 75 Seksyen 6, Bandar Kuala Lumpur ('harta tersebut') daripada Abdul Rahim Packeer dan Mohammed bin M Esmalsha pentadbir pusaka yang sah kepada estet K Abdul Rahim @ Abdul Rahim Kadar Batcha, si mati ('penjual tersebut'), pemilik berdaftar harta tanah tersebut.

(b) Sehingga kini kami telah pun membayar wang sebanyak Ringgit lima puluh lima ribu (RM55,000) sahaja kepada penjual tersebut sebagai bayaran terhadap belian tersebut.

(c) Kaveat persendirian ini dimasukkan untuk menjaga kepentingan kami terhadap harta tersebut sementara menunggu pindahmilik harta tersebut disempurnakan.

The plaintiff, in the meantime, decided to complete the sale and purchase and tendered payment of the balance purchase price to the administrator's solicitors by way of the plaintiff's solicitors' letter dated 24 July 1996. In the said letter the plaintiff intimated it was desirous of discontinuing its defence and counterclaim for rescission and for the refund of the money, in the suit. Since the administrator refused to sell the said property to the plaintiff by refusing to accept the balance of the purchase price, the plaintiff applied to amend its defence and counterclaim to one of specific performance of the said agreement. The amendment was contested. However, the senior assistant registrar ('the SAR') allowed the amendment on 13 September 1997. The appeal to the judge against the decision of the learned SAR was dismissed on 14 September 1998. In the meantime, the administrator then

withdrew its claim for specific performance of the said agreement and is opposing the plaintiff's amended counterclaim for specific performance.

Another matter of importance in the chronology of events must also be recorded. The plaintiff had caveated the said property on 16 December 1993. The defendant applied to remove the said caveat. Since the plaintiff failed to attend court on 14 May 1997 on the hearing of the defendant's application, the caveat was removed. The plaintiff's application for reinstatement of this caveat has not as yet been heard.

Whilst the defendant entered a caveat over the said property on 17 September 1994, the plaintiff lodged its second caveat over the same property on 15 July 1997.

Aggrieved person under s 327(1) of the NLC

Section 327(1) of the NLC reads:

> Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just.

In respect of s 327(1) there are two issues to be considered, namely: (i) whether the plaintiff is an aggrieved person under s 327(1) of the NLC to entitle him to apply to remove the caveat; and (ii) whether the defendant has shown a caveatable interest in the property. It is obvious that an aggrieved person is one whose legal right or interest in property is adversely affected by the wrongful act or conduct of another person or body. This is what Mokhtar Sidin JCA said in *Wu Shu Chen & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487 at p 499:

> The Code contains no definition on who is an aggrieved person. To my mind, the word 'aggrieved' must be given its ordinary meaning. To be aggrieved means one is dissatisfied with or adversely affected by a wrongful act of someone. An aggrieved person is therefore a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. The category of aggrieved persons is never closed.

In fact in *Re Registration of Caveat* [1908] Innes 114, the court held that where a proprietor of land who had taken a loan from a moneylender gave an oral promise to charge the land by way of a security, the promisee could lodge a caveat to protect what was described as a caveatable interest which he had acquired on the land by reason of his promise. In other words, even the moneylender was able to caveat the land.

Applying the law as set out in *Wu Shu Chen* and the decision of the Privy Council in *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 to the facts of the case before me, I find that the plaintiff is a person aggrieved under s 327(1) of the NLC. He has entered into an agreement to purchase the said property from the administrator of the deceased registered owner. The court has also given its consent for the sale of the said property to the plaintiff. In pursuance thereof, the plaintiff had paid a sum of RM115,000 as deposit to the administrator's solicitors as stakeholders, and which said

sum is still in the said solicitors' possession. The plaintiff had successfully sought an approval from the court to amend the defence and counterclaim to only now pray for specific performance. There has been no further appeal by the administrator against the learned judge's decision to uphold the learned SAR's decision to allow the amendment, which meant that the administrator had accepted the decision that the counterclaim for specific performance was not frivolous nor baseless. It is obvious that the defendant's caveat will affect the plaintiff's legal right to the said property.

Has the defendant shown a caveatable interest?

The Privy Council through *Eng Mee Yong* decided that once an applicant has shown that he is an aggrieved party, it is the caveator's duty then to prove that he has a caveatable interest. In *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719, the Court of Appeal set three stages for this court to consider before ordering the removal of a caveat. First, the court is to examine the caveat itself, that is, to look into Form 19B and the reasons stated therein for imposing the caveat. If no caveatable interest has been shown, the caveat ought to be removed without the need to consider the remaining two stages. If Form 19B shows a caveatable interest, the court then moves on to the second stage. The second stage is when an aggrieved party applies to remove the caveat. The court then examines the affidavit evidence of the caveator to find out if the evidence supports the caveatable interest claimed in the Form 19B or shows that the claim to a caveatable interest raises a serious issue to be tried. The court is to examine the evidence in detail and closely. If the evidence does not support the claim to a caveatable interest or that there is a serious issue to be tried on this point, the court is to remove the caveat without going to the third stage. Once the first two stages are satisfied, then the court must decide as a third stage, where the balance of convenience lies. It must be noted that at the second stage the caveator is not allowed to justify the retention of the caveat on a ground different from that set out in his Form 19B and the court is required to subject the caveator's affidavit evidence in support of the caveatable interest to 'meticulous scrutiny' (see *Goh Paik Swan v Ng Choo Lum* [1996] 3 MLJ 437). In *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782, the Court of Appeal held that the caveator must show an enforceable contract to have a caveatable interest. In *Wu Shu Chen,* the caveat was removed because the caveator had merely stated in the Form 19B that they had a caveatable interest 'by virtue of certain document' which they did not exhibit. Mokhtar Sidin JCA said at p 503:

> As can be seen in the said para 2 above, Goh had not disclosed what that so-called 'certain document' was. He chose to hide it from the world at large and it was as good as having nothing at all to show the caveatable interest he or Mingshu Syndicate claimed. He failed to disclose the instrument of trust in his caveat. Any person making a search on his caveat application form would have no notice of what the claim could be.

Considering the facts of the case before me, the defendant's Form 19B states in effect that the defendant purchased the said property from the administrator and paid RM55,000. That is all. The affidavit in reply opposing the application merely says:

A Since the defendant was in possession by reason of the matters abovestated, it entered into negotiations and concluded the sale and purchase agreement on terms and conditions. The contents of the agreement including the purchase price and terms etc are matters between the vendor and the purchaser and need not be disclosed to third parties including the plaintiff.

B It is obvious that the defendant had deliberately set out not to reveal the terms and/or the purchase price of the said property and whether there exists any oral or written agreement. He merely states that he has paid RM55,000 and there is no evidence what the balance of the purchase price is. As said by Mokhtar Sidin JCA in *Wu Shu Chen*, this court is posed with the question whether the defendant has indeed something to hide. Was C there indeed an agreement? Or if there indeed was a written agreement, did it contain anything that would vitiate the agreement thus clearly showing a non-caveatable interest? On the other hand, no satisfactory explanation has been given why the balance of the purchase price has not been stated. Or is this court to assume that the total purchase price was only RM55,000? If this be the case then surely something is amiss. Why is the administrator D rejecting a sale that would bring in RM1,150,000 and proceeding to enforce a sale that would give the beneficiaries only RM55,000? The caveatable interest of the defendant is clearly suspect and in my view, the defendant has failed miserably the 'meticulous scrutiny' test propounded by the Court of Appeal in *Luggage Distributors*.

E *Question of conditional contract*

In its submission the defendant referred to the agreement signed between the plaintiff and the administrator for the sale of the said property on 28 December 1983 as a conditional contract. In its reply, the plaintiff F questioned the contention of the defendant that the said agreement was a conditional contract. The plaintiff's surprise is ill-founded. The plaintiff itself has averred in its affidavit in support of the originating summons that the contract was a conditional contract. Neither party has in any case stated in their respective submissions what the operative conditions are. However, even if it is a question of any conditions operating against the plaintiff, the G plaintiff has waived such conditions by forwarding a cheque for the balance of the purchase price.

Had the plaintiff in fact elected for the rescission?

Whilst it is an admitted fact that the plaintiff had initially filed a defence and H counterclaim to the said suit by pleading for rescission of the contract and asking for a refund of the deposit, the plaintiff had had a change of heart and amended its pleadings to ask for specific performance of the contract. To my mind an election becomes effective only when a party adopts and maintains a stand as opposed to a possible alternative stand, throughout the entire case and up to its conclusion. In the case before me, even before the I hearing has commenced, albeit about 10 years after pleading rescission, the plaintiff has now contended that he wants specific performance. The issue of election therefore can never arise in this case.

Is there a need for the administrator to reapply to the court?

It is the defendant's argument that since the administrator had already obtained the court's permission earlier for the sale of the said property to the plaintiff, there was no need to obtain a second permission for the sale of the said property to the present defendant. This argument is flawed from inception. The reason why the court requires its consent for the sale of any immovable property of a deceased by the administrator pursuant to s 60(4) of the Probate and Administration Act 1959 is to protect the interest of the beneficiaries. When the court gave its consent for the sale of the said property to the plaintiff, it was aware of the details of the sale including the fact that the total purchase price was RM1,150,000. Surely common sense dictates that if the administrator contends that the earlier agreement to sell based on which the court's consent was obtained is deemed aborted, then the court's fresh approval must be obtained for a subsequent sale. This is all the more imperative in this case when (a) the total purchase price has never been disclosed, and (b) the wording of the grounds as stated in Form 19B indicates that it is possible that the purchase price was only RM55,000. This would mean that the beneficiaries are being defrauded. The court will not lend its benign hand to any nefarious schemes. I, therefore, hold that the administrator in this case ought to have obtained a fresh consent pursuant to s 60(4) of the Probate and Administration Act 1959 for the sale of the said property to the defendant. The failure to obtain such a consent must, prima facie, render the contract, if any, between the defendant and the administrator voidable pursuant to s 60(6) of the said Act. On this score too the defendant has failed to establish that it has a caveatable interest.

I, therefore, allow the plaintiff's application and order that the private caveat lodged by the defendant on the said property be removed from the register document of title by the registrar of titles. I also order that the defendant do pay the plaintiff damages to be assessed by the deputy registrar of the High Court. The plaintiff shall have the costs of this application to be agreed or taxed.

Applicaton allowed.

Reported by Wong Siok Chin